

REMARKS

Applicants hereby reply to the Office Action Summary dated March 24, 2005, within the shortened two-month period for reply, so Applicants request an Advisory Action, if necessary. In the Office Action Summary, the Examiner rejects claims 1-58. In reply, Applicants address the Examiner's remarks below and add new claims 59-60. After entry of this amendment, claims 1-60 (8 independent claims; 60 total claims) remain pending in the application. Support for the amendments may be found in the originally-filed specification, claims, and figures. No new matter has been introduced by these amendments. Reconsideration of this application is respectfully requested.

35 U.S.C. § 112 REJECTIONS

Applicants acknowledge and thank the Examiner for the withdrawal of the 35 U.S.C. § 112 rejections in the application.

CLAIM OBJECTIONS

The Examiner objects to claims 16-18 and 20-22 because the claims include a particular brand of dye and a name used in marketing the dye. Applicants respectfully note that the presence of trademarks or trade names is not *per se* improper under 35 U.S.C. § 112, when used to identify a source of goods and not the goods themselves. *See* M.P.E.P. 2173(u). Claims 16-18 and 18-22 make use of a trademark or trade name to identify the source of dye and ink, and not the dye and ink themselves. Applicants respectfully point the Examiner to commonly-assigned U.S. Patent No. 6,581,839 in which claims 10-12 and 14-16 contain the exact language "a dye sold under the mark EPOLIN VII-164 dye" as the Examiner objects to in the instant application. Therefore, Applicants respectfully assert that claims 16-18 and 20-22 comport with the requirements of 35 U.S.C. § 112, and that the Examiner's objections should be withdrawn.

35 U.S.C. § 103 REJECTIONS

To establish a proper Section 103 rejection, the Examiner must meet three criteria: 1) there must have been a *suggestion or motivation* in the cited references or art in general to modify or combine cited the references at the time of the invention; 2) there must have been a

reasonable expectation of success when the combination or modification to the art was made; and 3) the modification or combination must teach *all* of the claim limitations.

There is no Motivation, Teaching or Suggestion to Combine the References.

Applicants noted in their November 1, 2004 Reply that the Examiner's Section 103 obviousness rejections are derived from, and depend upon, an improper combination of the GB-A-1,371,254 ("Kilmer") and U.S. Patent No. 5,809,633 ("Mundigl") references. Particularly, Applicants argued that since there is no suggestion or motivation to combine the Kilmer and Mundigl references, the combination of Kilmer and Mundigl does not sustain a proper Section 103 rejection, and therefore the Examiner's rejections of Applicants' claims should be withdrawn. In response, the Examiner contends that the motivation to combine the references "include achieving the versatility of a card that can exchange data in more than one way and to have a backup way of storing data." The Examiner sets forth no support for its contention. Applicants can find no suggestion in the Kilmer or Mundigl reference that either may be modified to exchange data in more than one way as suggested by the Examiner. Therefore, Applicants disagree with the Examiner's contention and therefore traverse the Examiner's rejection.

It is well accepted that most inventions are combinations or modifications of old elements. Before prior art references can be combined or modified, there must be some suggestion or motivation found in the art to make the combination or modification suggested by the Examiner. Applicants note that the Examiner must establish a *prima facie* case of obviousness by presenting evidence showing that a person of average skill in the art would have known to combine and/or modify the prior art references to make the claimed invention.

In establishing a proper Section 103 rejection, the Examiner must also consider the prior art as a whole. It is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. See, *Application of Wesslau*, 353 F.2d 238, 241 (C.C.P.A. 1965); *Bausch &*

Lomb, Inc. v. Barnes-Hind/Hydrocurve, 796 F.2d 443, 448 (Fed. Cir. 1986), cert. denied, 484 U.S. 823 (1987). Applicants respectfully suggest that the Examiner has not considered the Kilmer and Mundigl references as a whole necessary to give full appreciation of what those references fairly suggest. For example, that Examiner ignores that Kilmer clearly teaches a coded card, exhibiting a substantial uniform transmissivity and surface reflectance in the visible light region. *See*, Kilmer, page 1, lines 12-16. The Kilmer coded card includes a first film and a second film laminated on the first film, wherein the films have different optical absorption characteristics at a substantially single frequency lying within an optical bandpass in the non-visible region. The card is encoded by either selectively aperturing the second film prior to lamination or laminating discrete portions of the second film upon selected areas of the first film. Indeed, Kilmer describes in great detail the method of encoding the card through the lamination process. *See generally*, Kilmer.

As such, Kilmer as a whole teaches a coded card, wherein coding is accomplished through specifically laminating a first film with a second film. Moreover, one would not have been motivated to include any other means of transmitting information in the Kilmer coded card since the means for transmitting information taught by Kilmer is selectively laminating the two films. Kilmer suggests no other means for transmitting information. That is, since Kilmer teaches a coded card relying on the absorption characteristics of two films, a person of average skill in the art would not have known to combine and/or modify, nor would the person be motivated to combine or modify, Kilmer to include the teachings of Mundigl to create Applicants' claimed invention.

Indeed, Kilmer leads away from the combination suggested by the Examiner since Kilmer teaches a coded card which transmits information via the lamination process described. Further, Kilmer does not suggest that the Kilmer coded card may be modified to "include achieving the versatility of a card that can exchange data in more than one way," as suggested by the Examiner. Applicants can find no support in Kilmer for the motivation suggested by the Examiner.

Applicants further note that Mundigl addresses a different problem than Kilmer. While Kilmer teaches a coded card, Mundigl teaches a method for producing a smartcard module for contactless smartcards. *See* Mundigl, column 1, lines 45-50. The Examiner acknowledges that Mundigl teaches a RFID transponder system that permits sophisticated data exchange by radio. Mundigl does not teach including the Mundigl module in a card formed to transmit information in any other way than by radio. As such, Mundigl as a whole teaches a method for providing a card means for transmitting information using the Mundigl smartcard module. Applicants find no support in Mundigl to modify Mundigl to "include achieving the versatility of a card that can exchange data in more than one way," as suggested by the Examiner. Since Mundigl teaches a smartcard module for transmitting information, a person of average skill in the art would not have known to combine and/or modify, nor would the person be motivated to combine or modify, Mundigl to include the teachings of Kilmer to create Applicants' claimed invention.

It is insufficient to establish obviousness by arguing that the separate elements of the invention existed in the prior art, absent some teaching or suggestion in the prior art to combine the elements. The fact that references *can* be modified or combined is insufficient basis for establishing obviousness. Further, it is well established that whether or not it would have been *obvious to try* a particular modification or combination is not the standard and is also insufficient to establish obviousness. Further still, the fact that the modification or combination would be well within the ordinary skill in the art, by itself, is also insufficient. There must be some objective motivation in the cited art or in general.

The Examiner needs to show the additional step of how this knowledge of the skilled artisan leads to the suggestion or motivation. The suggestion or motivation can only come from the art which existed at a time just prior to the invention and cannot come from the invention itself. Care must be taken to avoid hindsight reconstruction by using Applicants' invention as a guide through the maze of prior art references, so as to achieve the result of Applicants' claims. The prior art leading away from a particular combination or modification is strong evidence of non-obviousness, as is the case with both Kilmer and Mundigl as shown above.

Indeed, Applicants can find no technological motivation in the references for the combination suggested, nor for the motivation set forth by the Examiner. One skilled in the art would have a disincentive to try the combination because Kilmer and Mundigl teach different forms of exchanging information.

Since, the Kilmer and Mundigl references contain no teaching, suggestion, or motivation to combine the references as proposed by the Examiner, then to combine the Kilmer and Mundigl references would involve impermissible picking and choosing of the various missing claimed elements using hindsight reasoning in an attempt to recreate the claimed invention with Applicants' disclosure as the basis. Without using impermissible hindsight reasoning, it would not have been obvious to one of ordinary skill in the art at the time of the invention to modify the Kilmer or Mundigl references to include the missing claimed elements as suggested by the Examiner.

In summary, Applicants find no support for the motivation to combine the references in either Kilmer or Mundigl as the Examiner suggested. Therefore, Applicants respectfully suggest that the combination of Kilmer and Mundigl does not sustain a proper Section 103 rejection, and that the Examiner's rejections should be withdrawn. Applicants assert that all claims pending in the application are patentable over the cited references.

The Examiner mischaracterizes Applicants arguments. In particular, the Examiner mischaracterizes Applicants statement that "one skilled in the art would not have been motivated to include the smartcard module of Mundigl in the carrier body of Kilmer since the information in the Kilmer invention is already encoded in the Kilmer card body," as support that one reference teaches away from the other sufficient for establishing nonobviousness. In fact, Applicants statement concludes that one skilled in the art would not be motivated to combine Kilmer and Mundigl because Kilmer and Mundigl teach differing means for data transmission (e.g., Kilmer is optical, Mundigl is radio), and because Kilmer teaches an encoded card having substantially uniform transmissivity and surface reflectance in the visible light region. Kilmer leads away from including any form of data transmission interfering with Kilmer's goal of

providing a coded card having uniform transmissivity and surface reflectance as described. Applicants note that it is not necessary that one cited art teach away from the other cited art to demonstrate nonobviousness. As noted, where the prior art leads away from a particular combination or modification, this is strong evidence of non-obviousness. Coupled with the fact that no motivation or suggestion exists in the prior art to combine the references suggested by the Examiner, Applicants respectfully submit that Applicants meet their burden for demonstrating nonobviousness.

Cited References do not Teach All Claim Limitations.

Even if the motivation suggested by the Examiner exists, the combination of Kilmer and Mundigl does not teach all the limitations of the Applicants' invention. For example, the combination of references does not teach or suggest a transponder system authentication circuit, as recited in Applicants' independent claim 1, or a transponder system operable to receive an interrogation signal and authenticate the interrogation signal as is recited in Applicants' independent claims 1 and 33. Further, the combination of references does not teach, or suggest forming a subassembly by placing the machine recognizable compound between at least two layers of PET IR, as in Applicants' independent claims 41 and 42. As such, the combination of references does not include all the claim limitations of Applicants' independent claims 1, 33, 41, and 42, and those claims are patentable over the cited references. In as much as independent claims 1, 33, 41, and 42 are patentable, Applicants respectfully submit that the claims depending therefrom are also patentable.

Additionally, Applicants amend independent claims 36, 39, and 40 each recite a machine recognizable compound covering a substantial portion of the translucent or transparent card surface layer. None of the references cited by the Examiner teaches or suggests this claim limitation. Namely, the Examiner relies on Kilmer to proffer a card including a machine recognizable compound that is transparent in the visible range, as claimed by the Applicants. However, Kilmer teaches that machine readability is obtained by selectively aperturing the PVAC layer prior to lamination and causing the PVC to fill the apertures during the lamination

process. Alternatively, machine readability may be obtained by deposition of PVAC strips on discrete pre-selected areas of the PVC film. *See* Kilmer page 1, lines 55-60. As such, Kilmer does not teach or suggest that a machine recognizable compound substantially covers the card surface as is claimed by the Applicants. Therefore, Applicants respectfully assert that the combination of references does not recite all the limitation of Applicants' independent claims 36, 39, and 40, and that those claims are patentable over the cited references. In as much as independent claims 36, 39, and 40 are patentable, Applicants respectfully submit that the claims depending therefrom are also patentable.

Further still, the Examiner rejects claim 37 under Section 103 stating that Riedl (U.S. Patent No. 5,928,788) uses PET compounds and suggests that the compounds improve the temperature resistance and physical durability and recyclable properties of cards. However, neither Riedl, nor the other references cited, teach or suggest placing an IR film between two layers of PET GS as is claimed by the Applicants. As such, the cited references do not recite all the limitations in Applicants' independent claim 37. Applicants respectfully assert that claim 37 is therefore patentable over those references and the Examiner's rejection of claim 37 should be withdrawn.

Consequently, Applicants respectfully submit that the Examiner's Section 103 rejection of the Applicants' claims should be withdrawn.

New Claims 59 and 60.

Applicants submit new dependent claims 59 and 60 to more completely claim that to which the Applicants are entitled. New claims 59 and 60 depend from and incorporate the limitations of patentable independent claims 1 and 33, respectfully. New claims 59 and 60 are therefore themselves patentable over the cited references.

After consideration of the Applicants' amendments, Applicants respectfully submit that all of the claims pending in the application (claims 1-60: 8 independent, 60 total claims) fully comply with 35 U.S.C. § 112 and are patentable over the cited references. Consequently, allowance of all remaining claims is earnestly solicited.

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providing a coded card having uniform transmissivity and surface reflectance as described. Applicants note that it is not necessary that one cited art teach away from the other cited art to demonstrate nonobviousness. As noted, where the prior art leads away from a particular combination or modification, this is strong evidence of non-obviousness. Coupled with the fact that no motivation or suggestion exists in the prior art to combine the references suggested by the Examiner, Applicants respectfully submit that Applicants meet their burden for demonstrating nonobviousness.

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process. Alternatively, machine readability may be obtained by deposition of PVAC strips on discrete pre-selected areas of the PVC film. See Kilmer page 1, lines 55-60. As such, Kilmer does not teach or suggest that a machine recognizable compound substantially covers the card surface as is claimed by the Applicants. Therefore, Applicants respectfully assert that the combination of references does not recite all the limitation of Applicants' independent claims 36, 39, and 40, and that those claims are patentable over the cited references. In as much as independent claims 36, 39, and 40 are patentable, Applicants respectfully submit that the claims depending therefrom are also patentable.

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New Claims 59 and 60.

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Should the Examiner wish to discuss any of the above in greater detail or deem that amendments should be made to improve the form of the claims, then the Examiner is invited to telephone the undersigned at the Examiner's convenience. The Examiner is permitted to charge any fees regarding this Amendment, or credit any overpayment, to deposit account No. 19-2814. A duplicate copy of this request is enclosed for your use.

Respectfully submitted,

Date: April 26, 2005

By


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